IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3209 of 2007()

CC.204/2004 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY WHICH IS SPLIT UP AND REFILED AS CC NO.144/05.

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PETITIONER: ACCUSED NO.I

SAJITH A.T., S/O.ARAYAKANDY NANU, AGED 27 YEARS, RAYAROTH HOUSE, NETTOOR P.O., THALASSERY, KANNUR DISTRICT.

BY ADV. SRI.SARVOTHAMAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No.3209 OF 2007

Dated this the 18th day of October, 2007

ORDER

The petitioner was the 1st accused in a crime registered for the offences punishable, inter alia, under Secs.341 and 323 read with Sec.149 of the IPC. Altogether, there were six accused persons. Investigation was completed. Final report was filed. Cognizance was taken. The petitioner did not appear before the learned Magistrate. Some of the co-accused faced trial. They were found not guilty and acquitted on the basis of the evidence adduced in such case. The case against the petitioner has been split up and re-filed. Coercive processes have been initiated against the petitioner. The petitioner faces such processes chasing him.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. The

petitioner, in these circumstances, wants to surrender before the learned Magistrate and seek regular bail. The petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is, in these circumstances, that the petitioner has come to this Court for a direction to the learned Magistrate to release him on bail when he appears before the learned Magistrate.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to

the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

5. The petitioner, of course, made a further request that the proceedings may be quashed in the light of the judgment of acquittal secured by the co-accused. **Moosa v. Sub Inspector of Police** (2006 (1) KLT 552) is authority for the proposition that an absconding co-accused cannot claim any benefit or advantage on the basis of the acquittal of the co-accused in a trial held in his absence. I have been taken through Anneuxre-I judgment of acquittal. It cannot be said that the foundation of the prosecution is in any way shaken by the judgment of acquittal rendered in Annexure-I. The prayer to quash the surviving prosecution against the petitioner cannot, in these circumstances, succeed.

6. The learned counsel for the petitioner makes an interesting prayer. Even before he, who has been absconding all along, has appeared before the learned Magistrate, he wants a direction to be issued for expeditious disposal. It is for the petitioner to appear before the learned Magistrate and then seek expeditious disposal before the learned Magistrate. Considering the long pendency of the matter, notwithstanding the delay on

the part of the petitioner in appearing, the learned Magistrate must consider such request and pass appropriate orders.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge